IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KATIA HILLS,

Plaintiff,

-against-

AT&T MOBILITY SERVICES LLC a/k/a AT&T MOBILITY LLC,

Defendant.

Civil No.: 3:17-cv-00556-JD-MGG

DEFENDANT'S MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL AUTHORITY

Defendant AT&T Mobility LLC ("Defendant") respectfully submits that the Seventh Circuit Court of Appeals' August 16, 2022 decision in *Equal Employment Opportunity Commission v. Wal-Mart Stores East, L.P.*, No. 21-1690, 2022 WL 3365083 (7th Cir. Aug. 16, 2022) ("*Wal-Mart*") controls the resolution of issues raised in the Motion for Partial Summary Judgement (ECF 140) filed by plaintiff, Katia Hills ("Plaintiff"). Therefore, pursuant to Local Rule 56-1(d), Defendant seeks permission to file this supplemental authority.

In *Wal-Mart*,[1] the Seventh Circuit reviewed the U.S. Supreme Court's decision in *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015), and its application of the *McDonnell Douglas* analysis to cases under the Pregnancy Discrimination Act ("PDA"), 42 U.S.C. §§ 2000e(k) & 2000e-2(a)(1). The case concerned Wal-Mart's Temporary Alternate Duty Policy ("TAD Policy"), which offered light duty work only to workers injured on the job. EEOC filed suit on behalf of a

[1] A copy of the Seventh Circuit's decision is attached hereto as Exhibit A.

class of pregnant workers claiming that, "excluding pregnant women from the TAD Policy caused Walmart to violate" the PDA. (*Wal-Mart*, at *2.)

The parties cross-moved for summary judgment. Wal-Mart conceded that the EEOC established a prima facie case but argued that it articulated a legitimate nondiscriminatory reason for the TAD Policy and the EEOC failed to establish evidence of pretext.[2] The district court denied the EEOC's motion and granted Wal-Mart's motion. The Seventh Circuit affirmed. The Court of Appeals rejected two arguments Plaintiff has advanced in this case.

First, Plaintiff argued that "unless an employer can articulate [at the second step of the *McDonnell Douglas* analysis] a compelling reason for failing to equally accommodate pregnant workers, *the employer violates the PDA*." (ECF 141 at 11 (emphasis added).) Similarly, in *Wal-Mart*, The EEOC argued that "*Young* requires Walmart 'to do more than simply articulate the reason why [workers injured on the job were offered light duty]. The employer must also articulate *the reasons why it excluded pregnant employees* from the benefit." (*Wal-Mart*, at *6.). The Seventh Circuit disagreed that there was a heightened burden for employers at the second step. (*Id.* at *6.)[3] Wal-Mart had satisfied its burden at the second step:

> by offering a legitimate reason for the TAD Policy's limits that was not discriminatory. … [I]t had chosen for sound reasons to offer a benefit to a certain category of workers, those injured on the job, *without intending to discriminate against anyone else* with physical limitations, whether caused by off-the-job injuries, illness, pregnancy, or anything else, to whom its reasons did not apply.

(*Id.* (emphasis added).)

[2] The asserted justification for the policy was that it reduced workplace accident costs and worker's compensation costs, among other things. (*Id*. at *4–5.)

[3] The Agency relied on two passages from *Young*, one of which the Seventh Circuit said merely "refers to the need to focus the disparate-treatment inquiry on evidence of intentional discrimination." (*Id.*) The second passage, which Plaintiff relies on in this case (see ECF 141 at 11), was "a fact-focused rhetorical question," according to the Seventh Circuit. (*Id.*)

Second, Plaintiff argued that *Young* relieved her of the requirement to present evidence of comparators who were similar in the inability to come to work. (ECF 151 at 11–12.) Summary judgment in favor of *Wal-Mart* was affirmed, in part, because the EEOC failed to offer evidence of comparators "other than workers injured on the job." (*Wal-Mart*, at *6.) The Court rejected as "circular" the EEOC's argument that it met its burden by showing that Wal-Mart "denied light duty to 100 percent of pregnant workers and granted light duty to 100 percent of occupationally injured workers." (*Id.* at *7.) Otherwise, the Court observed, pregnant workers would be given the "most-favored-nation" status the Supreme Court in *Young* said was *not* required by the PDA. (*Id.*) This was precisely the argument Plaintiff advances in this case.

For the reasons set forth in AT&T's Memorandum in Opposition (ECF No. 150), the Court should deny Plaintiff's motion for partial summary judgment.

Dated: August 18, 2022

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I caused the foregoing **DEFENDANT'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

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Christine L. Cedar